

**Countywide Integrated Waste Management Plan (CIWMP)
Enforcement Policy Part II:**

Failure to Implement a SRRE and HHWE

Updated June 30, 2010

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BACKGROUND

On November 17, 1993, CalRecycle's predecessor, the California Integrated Waste Management Board (Board) approved Part 1 of the Staff Analysis, CIWMP Enforcement report. Part 1, entitled "Adequacy of CIWMP and Elements," outlines the procedures CalRecycle staff will use to determine the adequacy of Countywide Integrated Waste Management Plans (CIWMPs), Source Reduction and Recycling Elements (SRREs), Household Hazardous Waste Elements (HHWEs), Nondisposal Facility Elements (NDFEs), and Countywide Siting Elements (CSEs).

This report constitutes Part 2 of the CIWMP Enforcement report. CalRecycle must determine, for each jurisdiction, whether the SRREs and HHWEs have been implemented. Annual reports submitted by the jurisdictions will be used, in combination with the Jurisdiction Review process and other information, to determine implementation. This report recommends criteria CalRecycle will use during the Jurisdiction Review to determine whether local jurisdiction SRREs and HHWEs have been implemented, mechanisms CalRecycle and local jurisdictions will use to achieve compliance with implementation mandates, and the structure of penalties that may be imposed on jurisdictions failing to implement their SRREs and HHWEs.

WHAT IS IMPLEMENTATION?

Full implementation, for the purposes of this report, includes executing the programs as described in the SRRE and HHWE, using the jurisdiction's annual per capita disposal rate and diversion programs implementation as factors in determining compliance with the diversion requirements. The per capita disposal rate is not determinative of compliance. Criteria for determining the level of SRRE and HHWE implementation are outlined separately.

CalRecycle staff will refer to the various components of the SRRE and HHWE, information from a jurisdiction's annual report, CalRecycle's Jurisdiction Review, and other sources to determine how fully a jurisdiction has implemented its SRRE and HHWE.

SRRE IMPLEMENTATION

Criteria for SRRE Implementation

Each SRRE outlines the source reduction, recycling, composting, and public education and information programs a jurisdiction will implement. Additionally, the SRRE identifies funding mechanisms and monitoring for these programs, and describes their integration into a comprehensive waste diversion program. A fully implemented SRRE means a jurisdiction is both carrying out the selected programs and achieving the diversion requirements.

Board staff has identified four scenarios to use in determining SRRE implementation:

- I. Implementing all or most programs, and meeting diversion requirements.
- II. Implementing some/all programs, but not meeting diversion requirements.
- III. Implementing a small number of programs and meeting diversion requirements.

IV. Not implementing programs and not meeting diversion requirements.

To determine the level of SRRE implementation, staff would use annual reports submitted by local jurisdictions, CalRecycle's Jurisdiction Review process, and provide technical assistance, when requested. This would apply to all four scenarios.

Staff recommends using the following criteria to determine the extent to which a jurisdiction has implemented, or shown a good faith effort to implement, their selected diversion programs. These criteria reflect the four scenarios above, and may not be all-inclusive. These criteria are provided to serve as an example. The criteria are not prescriptive and they are not a "checklist". They indicate the issues that will be examined when CalRecycle performs its Jurisdiction Reviews. There is no intent in this report to mandate that each criterion be adhered to, and that, if not, that a local jurisdiction would be in a "failure" situation.

It is not CalRecycle's intention to micro-manage local jurisdiction's decisions on which diversion programs have been identified and selected for implementation. CalRecycle will attempt, with the identified criteria, to assist local jurisdictions who may need help in identifying why implementation of diversion programs is failing to achieve the results expected, or is failing to meet the diversion requirements.

I. Implementing All or Most Programs and Meeting Diversion Requirements.

Jurisdictions implementing all or most of their diversion programs and achieving or below their 50% equivalent per capita disposal target are not subject to fines by CalRecycle. These jurisdictions will be subject to future CalRecycle review at least once every four years. Jurisdictions will be required to submit information to CalRecycle stating why diversion programs identified in SRREs have not been implemented. Staff recommends using the following criteria to determine if a jurisdiction fits this scenario.

- What is the measured annual per capita disposal rate?
- What programs have been implemented, or what existing programs have been continued or expanded, to achieve the diversion requirements?
- Will these programs maintain the desired level of diversion?
- Are contingency programs selected and available to implement, if necessary, to maintain diversion levels?

II. Implementing Some/All Programs, but not Meeting Diversion Requirements.

If a jurisdiction is implementing some or all selected diversion programs and yet not achieving its 50% equivalent per capita disposal target, it may be that the SRRE is in need of revision. Staff recommends investigating the extent to which a jurisdiction has tried to meet the diversion requirements through its selected diversion programs, and the reasons it has failed to implement some or all of those diversion programs. Staff may recommend that a jurisdiction has either made a good faith effort to implement its SRRE, or should be put on a compliance schedule. In

the case of a rural jurisdiction, CalRecycle could instead recommend the jurisdiction apply for a diversion rate reduction as allowed in PRC Section 41787. If a compliance schedule was ordered and the jurisdiction failed to meet the requirements of the order, CalRecycle could then consider levying an administrative fine against the jurisdiction. A fine, if determined to be appropriate, would be decided by CalRecycle on a case-by-case basis, and could be assessed at up to \$10,000 per day.

Staff recommends using the following criteria to assess the specific conditions that may have prevented a jurisdiction from meeting its 50% equivalent per capita disposal target, and whether a good faith effort was made by the jurisdiction to meet the requirements.

- Have some/all selected diversion programs been implemented? If **yes**, then what may be the cause for not reaching the requirements? For example:
 - What is the measured annual per capita disposal rate?
 - Does the jurisdiction have a CalRecycle approved reduced diversion requirement?
 - Were waste quantification problems encountered when calculating achievement of the 50% equivalent per capita disposal target?
- Have participation and program effectiveness been low?
 - Has the jurisdiction utilized public education and information programs to promote its diversion programs?
 - Has the jurisdiction targeted the appropriate sector (commercial/residential/industrial) in its public education and information campaign?
 - Is the program accessible to the targeted audience? Have language barriers been addressed?
 - Have incentives for participation been used (e.g., cash for recyclables, free/reduced cost compost bins for workshop attendance, etc.)?
 - What other program alternatives have been used to promote waste prevention and reduction programs (e.g., increased tip fees, local land use restrictions, increased business fees, etc.)?
 - Has the jurisdiction utilized CalRecycle's free public information materials?
- Have markets for diverted materials continually remained low or poor?
 - Has the jurisdiction investigated local and regional marketing options?
 - Has the jurisdiction investigated development opportunities with the private sector?
 - Has the jurisdiction worked with CalRecycle's market development program?
 - Has the jurisdiction applied to CalRecycle's Recycling Market Development Zone (RMDZ) program?
- Were all significant waste materials selected in the SRRE targeted in the implemented programs?
 - Have conditions changed to make these materials less targetable and/or marketable?

- Have waste generation characteristics changed such that selected programs would no longer be feasible or appropriate?
- Were sufficient funds available to implement programs?
 - Has the jurisdiction investigated grants and loans available from CalRecycle, the U. S. Environmental Protection Agency (US EPA), etc.?
 - Has the jurisdiction investigated regional approaches to programs and expenses?
 - Has the jurisdiction investigated all financial options selected in the SRRE, including contingency funding?
- Have time frames projected in the SRRE been met?
 - What factors have affected these time frames?
 - Will time frames be adjusted to continue program implementation?
- Were local diversion programs implemented but the jurisdiction had disposal increases due to a regional diversion facility generating and disposing significant amounts of residue within the "host" jurisdiction's borders?
- Have other state-mandated programs affected solid waste disposal tonnage (such as a doubling of street sweeping activities due to Clean Water Act requirements for certain cities)?
- What other problems has the jurisdiction encountered in program implementation?
- Have all selected diversion programs been implemented? If no, then what may be the reason for not implementing the programs? For example:
 - What diversion programs were not implemented, and why?
 - What selected diversion facilities (e.g., material recovery, composting) are not yet on-line?
 - Did financing options for a selected diversion facility (e.g., material recovery, composting) fail?
 - Did a jurisdiction face unavoidable regulatory delays? If so, explain the regulatory delays and how they affected the project time lines.
 - Did a jurisdiction elect to recover a certain type of material (e.g., cardboard), but the hauler/operator will not cooperate and recover the waste type on behalf of the jurisdiction? Is the failure to recover the material(s) due to logistical problems?
- Was insufficient staff available to implement programs?
 - Has the jurisdiction investigated volunteer or internship programs?
 - Has the jurisdiction investigated regional approaches to programs, expenses, and staffing?
 - Was there a high turnover in staff?
 - Did the jurisdiction allot reasonable resources?
- Have time frames projected for program implementation in the SRRE been met?
 - What factors have affected these time frames?

- Have time frames been adjusted to continue program implementation?
- Have waste generation characteristics changed (e.g., a military base closure, or a manufacturing/industry relocated or closed), such that selected programs would no longer be feasible or appropriate?
- Have contingency diversion programs been implemented to reach the diversion requirements?
 - If contingency programs are significant in scale, has that caused a delay?
- Have existing contractual or legal issues prohibited a jurisdiction from implementing programs?
 - Can the jurisdiction amend franchise agreements? If not, when do the agreements expire?
 - Can the jurisdiction prepare a request for proposal(s) for the implementation of programs and facilities?
- What technical assistance can CalRecycle provide to assist local jurisdictions in implementing diversion programs?

III. Implementing a Small Number of Programs and Meeting the Diversion Requirements.

This Scenario focuses on the level of SRRE implementation, and reinforces the statutory requirement for SRRE (i.e., program) implementation in addition to meeting the 50% equivalent per capita disposal target. Meeting the per capita disposal target is a factor in evaluating performance but is not determinative of compliance. This scenario will allow CalRecycle to make a case-by-case determination of whether a jurisdiction has made a good faith effort to implement its SRRE, or whether it should be issued a compliance order. Jurisdictions will be required to submit information to CalRecycle stating why diversion programs selected for implementation in the SRRE have not been implemented.

Staff recommends using the following criteria to determine if a jurisdiction fits this Scenario:

- What is the measured annual per capita disposal rate?
- What programs have been implemented, or what existing programs have been continued or expanded, to achieve the diversion requirements?
- Will these programs maintain the desired level of diversion?
- Are contingency programs selected and available to implement, if necessary, to maintain diversion levels?
- Have any implemented programs been dropped, and if so, why?

- Have programs selected for implementation not been implemented? If not, why not?
 - What selected diversion facilities (e.g., material recovery, composting) are not yet on-line?
 - Did financing options for a selected diversion facility (e.g., material recovery, composting) fail?
 - Did a jurisdiction face unavoidable regulatory delays? If so, explain the regulatory delays and how they affected the project time lines.
 - Did a jurisdiction elect to recover a certain type of material (e.g., cardboard), but the hauler/operator would not cooperate and recover the waste type on behalf of the jurisdiction? Is the failure to recover the material(s) due to logistical problems?
- Were sufficient funds available to implement programs?
 - Has the jurisdiction investigated grants and loans available from CalRecycle, US EPA, etc.?
 - Has the jurisdiction investigated regional approaches to programs and expenses?
 - Has the jurisdiction investigated all financial options selected in the SRRE, including contingency funding?
- Was insufficient staff available to implement programs?
 - Has the jurisdiction investigated volunteer or internship programs?
 - Has the jurisdiction investigated regional approaches to programs, expenses, and staffing?
 - Was there a high turnover in staff?
 - Did the jurisdiction allot reasonable resources?
- Have participation rates and program effectiveness been too low?
 - Has the jurisdiction utilized public education and information programs to promote its diversion programs? Has the jurisdiction targeted the appropriate sector (commercial/residential/industrial) in its public education and information campaign?
 - Is the program accessible to the targeted audience? Have potential language barriers been addressed?
 - Have incentives for participation been used (e.g., cash for recyclables, free/reduced cost compost bins for workshop attendance, etc.)?
 - What other program alternatives have been used to promote waste prevention and reduction programs (e.g., increased tip fees, local land use restrictions, increased business fees, etc.)?
 - Has the jurisdiction utilized CalRecycle's free public information materials?
- Have markets for diverted materials continually remained low or poor?
 - Has the jurisdiction investigated local and regional marketing options?
 - Has the jurisdiction investigated development opportunities with the private sector?
 - Has the jurisdiction worked with CalRecycle's market development program?
 - Has the jurisdiction applied to CalRecycle's RMDZ program?

- Were all significant waste materials selected in the SRRE targeted in the implemented programs?
 - Have conditions changed to make these materials less targetable and/or marketable?
 - Have waste generation characteristics changed such that selected programs would no longer be feasible or appropriate?
- What other problems has the jurisdiction encountered in program implementation?
 - Have waste generation characteristics changed (e.g., has a military base closed, or a manufacturer/industry relocated or closed), such that selected programs would no longer be feasible or appropriate?
- Have contingency diversion programs been implemented to reach the diversion requirements?
 - If contingency programs are significant in scale, has that caused a delay in implementation?
- Have existing contractual or legal issues prohibited a jurisdiction from implementing programs?
 - Can the jurisdiction amend franchise agreements? If not, when do the agreements expire?
 - Can the jurisdiction prepare a request for proposal(s) for the implementation of programs and facilities?
- What technical assistance can CalRecycle provide to assist the local jurisdiction in implementing diversion programs?

IV. Not Implementing Programs and not Meeting Diversion Requirements.

Staff will investigate the reasons a jurisdiction has failed to implement diversion programs and thus failed to meet the 50% equivalent per capita disposal requirements. Staff will recommend that CalRecycle issue compliance schedules to jurisdictions in this scenario. If the requirements of the compliance schedule are not met, CalRecycle could, at a public hearing, consider assessing the jurisdiction an administrative fine of up to a maximum of \$10,000 per day.

Staff recommends using the following criteria to determine if a jurisdiction fits this scenario.

- What is the measured annual per capita disposal_rate?
- Why were programs not implemented?
- Were insufficient funds available to implement programs? If sufficient funds were available, explain why they were not dedicated to implementing programs. For example:
 - Did the jurisdiction investigate grants and loans available from CalRecycle, US EPA, etc.?
 - Did the jurisdiction investigate regional approaches to programs and expenses?

- Did the jurisdiction investigate all financial options selected in the SRRE?
- Is there a lack of markets for diverted materials, and therefore programs were not implemented? For example:
 - Did the jurisdiction investigate local and regional marketing options?
 - Did the jurisdiction work with CalRecycle's market development program and apply for market development zone designation?
- Was sufficient staff available to implement programs? Was staff allocated?
 - Did the jurisdiction investigate volunteer or internship programs?
 - Did the jurisdiction investigate regional approaches to programs, expenses, and staffing?
- Have existing contractual or legal issues prohibited a jurisdiction from implementing programs?
 - Can the jurisdiction amend franchise agreements?
 - Can the jurisdiction prepare a Request For Proposal (s) for the implementation of programs and facilities?
- What other problems has the jurisdiction encountered that resulted in no diversion program implementation?

Additional Considerations for SRRE Implementation

Statute provides for specific variations to the 25 and 50 percent diversion requirements. These variations include:

1. No more than 10 percent of the average (2003 through 2006) calculated per capita generation tonnage may be counted for a city, county, or regional agency's use of a CalRecycle-permitted transformation project (PRC Sections 41783);
2. Petitions for reduction for rural jurisdictions (PRC Section 41787);
3. Regional and rural regional agency formation (PRC Sections 40970 and 41787.1);
4. A two-year time extension for rural jurisdictions (PRC Section 41787.4);
5. A time extension granted by CalRecycle to a city that incorporated after January 1, 1990, and before January 1, 2001, (PRC Section 41820.5);
6. Pursuant to PRC Section 41784, if CalRecycle determines that a jurisdiction's SRRE will not achieve the 50 percent diversion requirement and a city or county chooses not to use a transformation project to achieve the 50 percent diversion requirement, CalRecycle shall not require the jurisdiction to use a transformation project to achieve the 50 percent requirement;
7. A reduction of the diversion requirements of PRC Section 41780 for any city or county which, on or before January 1, 1990, disposed of 75 percent or more of its solid waste, collected by the jurisdiction or its authorized agents or contractors, by transformation if certain conditions exist (PRC Section 41786).

Staff recommends that the following criteria, as applicable, be considered in addition to the previous criteria outlined above.

Rural Jurisdictions

[Note that, pursuant to SB 1016 (Wiggins, 2008) as of January 1, 2009, the definition of rural city, rural regional agency and rural county has changed. See PRC Sections 40183 and 40184 before applying this section]

- Has the rural jurisdiction utilized CalRecycle's rural assistance information and programs?
- Has the rural jurisdiction investigated regional approaches to program implementation?
- Is the rural jurisdiction qualified to petition for a reduction in diversion requirements?
- What other considerations, including but not limited to market development obstacles, population density, waste generation rates, dominant waste generation categories and types, and geographic, demographic and economic factors, have affected the rural jurisdiction's ability to meet the diversion requirements?

Approved Petition for Reduction

- Are rural cities and rural counties that are members of a rural regional agency eligible for a reduction in diversion requirements? If so, then the rural regional agency may be eligible for a reduction of the diversion requirements of PRC Section 41780. Has the rural regional agency petitioned CalRecycle for a reduction in the diversion requirements?
- Has a jurisdiction that qualifies for a reduction petitioned for a reduction in the diversion requirements?
- Did a jurisdiction petition for a reduction in diversion requirements and receive a reduced diversion requirement? If so, were the conditions of the petition reduction request met by the jurisdiction?
- If the jurisdiction has a CalRecycle-approved reduced diversion requirement, was the reported total reporting year disposal tonnage equal to or less than the maximum allowable disposal for that reduced disposal percentage?
- Has the jurisdiction implemented the programs specified in the approved petition?
- Are there any other considerations that affect the jurisdiction's ability to meet its reduced diversion requirements?

Extensions

- Did a newly incorporated city (incorporated after January 1, 1990) receive a time extension from the diversion requirements (PRC Section 41820.5)?
- Has the rural city, rural county, or rural regional agency been granted a two-year time extension (PRC Section 41787.4)?
- Is the jurisdiction achieving the maximum feasible amount of source reduction, recycling, and composting within its jurisdiction?

Regional Agencies

Jurisdictions that form a regional agency to share planning and diversion requirements of the Integrated Waste Management Act are required by PRC Section 40975(b)(2) to describe the method by which any civil penalties imposed will be allocated among the agency members. Each member of a regional agency, which is formed to allow its members to share diversion, is liable for the sum of the penalties that may be imposed against each member of the regional agency. Thus, a regional agency that has five members would be subject to a maximum penalty of \$50,000 per day. However, CalRecycle may consider the relevant circumstances that resulted in a regional agency (as described in PRC Sections 40970-40976) not achieving the diversion requirements and the individual members who may have contributed to the circumstances that resulted in a failure to achieve the diversion requirements.

PRC Section 40974 establishes the maximum liability for civil administrative penalties imposed pursuant to PRC Section 41813 or PRC Section 41850 at \$10,000 per day for each member of a regional agency. The remainder of PRC Section 40974 may be interpreted to provide an option for members of a regional agency to agree among themselves to a different maximum liability through an apportionment of the sum of the penalties that may be imposed against each member of the regional agency. CalRecycle may consider a regional agency's joint powers agreement that specifies that all liability for fines rests with the non-complying agency member with no liability assigned to the regional agency or the authority.

An apportionment of penalties on agency members and not the regional agency may provide for flexibility for the regional agency to continue to resolve the issue that is causing the agency members to not meet the diversion requirements. CalRecycle may consider limiting penalties to a maximum of \$10,000 per day if a member's failure does not cause other members or the regional agency to fail to implement the programs in the regional SRRE. Consideration of no fines or penalties on a member or the regional agency may be given by CalRecycle if the agency member has demonstrated to the satisfaction of CalRecycle to have made good faith efforts to implement the programs assigned to it in the regional SRRE. Questions to consider include:

- Is the jurisdiction part of a regional agency or rural regional agency?
- Is the regional agency implementing its programs and meeting its diversion requirements?
- If a regional agency was dissolved, will each of the agency members meet the 50% equivalent per capita disposal requirements?

Transformation

- Did the jurisdiction claim no more than 10 percent of the average (2003 through 2006) calculated per capita generation tonnage (PRC Section 41783)?
- Did the jurisdiction dispose of 75 percent or more of its solid waste by transformation, and if so, were the statutory conditions in PRC Section 41786 met?

HHWE IMPLEMENTATION

Each HHWE describes programs for the safe collection, recycling, treatment and disposal of hazardous wastes generated by households, a monitoring program, funding sources, and a specific implementation time frame. CalRecycle staff recommends using the following criteria to determine whether selected programs were implemented, and to assess the reasons a jurisdiction has failed to implement its HHW programs. CalRecycle staff will also determine if the jurisdiction is following the HHWE implementation schedule. Jurisdictions failing to fully implement their HHWE may be fined up to \$10,000 per day.

Criteria for HHWE Implementation

Programs Implemented

Jurisdictions implementing their HHW programs are not subject to fines by CalRecycle. Staff recommends the following criteria be used to determine if programs were implemented. For example:

- Was a HHW event or a permanent collection facility made available to all households in the jurisdiction, regardless of actual participation?
- What expenditures have been devoted to HHW collection, treatment, recycling, and disposal?
- What efforts have been made to inform the public about HHW and HHW collection events and/or facilities?
- Have the time frames specified in the HHWE for implementing programs been followed (considering reasonable barriers to implementation)?

Programs Not Implemented

Staff recommends investigating the extent to which a jurisdiction has implemented programs, and the reasons they have failed to implement programs. Based upon the evaluation, staff may recommend to CalRecycle that a jurisdiction be issued a compliance order. CalRecycle may consider assessing fines of up to \$10,000 per day to jurisdictions that fail to meet the requirements of their compliance orders, on a case-by-case basis. Example criteria include:

- What programs were not implemented?
- Has the jurisdiction investigated local and regional waste exchange, recycling and reuse options?
- Were insufficient funds available to implement programs?
 - Has the jurisdiction investigated grants available from CalRecycle, the US EPA, etc.?
 - Has the jurisdiction investigated regional approaches to programs and expenses?
 - Has the jurisdiction investigated all financial options selected in the HHWE?
- Have time frames projected in the HHWE been met?
 - What factors have affected these time frames?
 - Will time frames be adjusted to continue program implementation?
- What other problems has the jurisdiction encountered in program implementation?
- Was insufficient staff available to implement programs?
 - Has the jurisdiction investigated volunteer or internship programs?
 - Has the jurisdiction investigated regional approaches to programs, expenses, and staffing?
- Have existing contractual or legal issues prohibited a jurisdiction from implementing programs?

DETERMINATION OF SRRE AND HHWE IMPLEMENTATION

CalRecycle staff will refer to the various components of the SRRE and HHWE, information from a jurisdiction's annual report, CalRecycle's Review, and other information sources to determine how fully a jurisdiction has implemented its SRRE and HHWE.

Annual Reports

SRRE Information

Each jurisdiction is required to annually submit a report to CalRecycle summarizing its progress in implementing waste diversion programs and achieving the diversion requirements. A jurisdiction's annual per capita disposal rate and up-to-date information on its diversion programs should be included in each annual report. Annual reports must be submitted to CalRecycle by August 1 of each year following the year of Board approval of a jurisdiction's SRRE, with the first annual report (for 1995) due by August 1, 1996, and each year thereafter. CalRecycle will provide jurisdictions with a model annual report.

HHWE Information

Each jurisdiction is also required to include in its annual report information summarizing its progress in implementing the household hazardous waste programs selected in its HHWE.

CalRecycle Jurisdiction Review

Based on the information provided in a jurisdiction's annual reports submitted pursuant to PRC Section 41821 and any other relevant information, CalRecycle shall make a finding as to whether each jurisdiction was in compliance with PRC Section 41780 for the calendar year 2006 and shall review a jurisdiction's compliance with the diversion requirements of PRC Section 41780 as follows (PRC Section 41825):

- If the jurisdiction was in compliance for the calendar year 2006, commencing January 1, 2012, and at least once every four years thereafter, CalRecycle shall review whether the jurisdiction has implemented its SRRE and HHWE.
- If the jurisdiction made a good faith effort to implement its SRRE and HHWE, commencing January 1, 2010, and at least once every two years thereafter, CalRecycle shall review, whether the jurisdiction has implemented its SRRE and HHWE.
- If the jurisdiction was not in compliance for the calendar year 2006, commencing January 1, 2010, and at least once every two years thereafter, CalRecycle shall review, whether the jurisdiction has implemented its SRRE and HHWE.
- If a jurisdiction subject to a two-year schedule subsequently comes into compliance with PRC Section 41780, CalRecycle has discretion to switch the jurisdiction to a four-year review schedule.
- If a jurisdiction subject to a four-year schedule subsequently falls out of compliance with PRC Section 41780, CalRecycle has discretion to switch the jurisdiction to a two-year review schedule.
- In addition to the above requirements, CalRecycle may review whether a jurisdiction is in compliance with PRC Section 41780 at any time that CalRecycle receives information that the jurisdiction may not be making a good faith effort to implement its SRRE or HHWE.

Compliance Measurements

Pursuant to SB 1016, as of January 1, 2009 the 50% equivalent per capita disposal target is the amount of disposal a jurisdiction would have had during the base period if it had been exactly at a 50% diversion rate. It is calculated using the average of 2003-2006 per capita generation for each jurisdiction (in pounds). It then divides this generation average in half to

determine the 50% equivalent per capita disposal target. This is the only time that generation will be used. This target will be specific to each jurisdiction and is not comparable to those of other jurisdictions.

The target is an indicator for comparison with that jurisdiction's annual per capita per day disposal rate beginning with the 2007 program year.

Disposal reporting requirements are described in 14 CCR, Article 9.2, Sections 18800-18813. A jurisdiction will determine its yearly disposal amount based on disposal information provided by one or more counties as part of CalRecycle's Disposal Reporting System. Jurisdictions will measure and report on their achievement of the 25 percent diversion requirement for the years 1995 through 1999, and achievement of the 50 percent diversion requirement for 2000 and beyond.

A jurisdiction will measure its progress toward achieving the applicable waste diversion requirement as required in PRC Section 41780 by following the requirements outlined in PRC Sections 41780.05, 41780.1 and 41780.2, and Sections 41781 through 41786, as applicable.

Criteria for Measuring Diversion Requirements

Staff recommends using the following criteria to determine whether the applicable diversion requirement has been achieved. Information will be obtained from the electronic annual report, information provided by the jurisdiction, and other sources as necessary.

- Has the jurisdiction updated its SRRE and/or, HHWE through the electronic annual report to include any new or expanded programs it has implemented or plans to implement?
- Has the jurisdiction updated its NDFE through the electronic annual report to reflect any new or expanded non-disposal facilities it is using or planning to use?
- Is the total actual per capita disposal amount reported in the jurisdiction's applicable annual report equal to or less than the 50% equivalent per capita disposal allowable to meet the applicable diversion requirement of PRC Section 41780, or CalRecycle-approved reduced diversion requirement?
- Has the jurisdiction summarized its progress in diverting construction and demolition material, including information on programs and ordinances implemented by the local government and quantitative data, where applicable?
- Has the jurisdiction included other information relevant to compliance with PRC Section 41780 including, but not limited to:
 - Information on disposal reported pursuant to PRC Section 41821.5 that the jurisdiction believes may be relevant to CalRecycle's determination of the jurisdiction's per capita disposal rate.

- Disposal characterization studies or other completed studies that show the effectiveness of the programs being implemented.
- Factors that the jurisdiction believes would affect the accuracy of or mitigate the amount of solid waste disposed by the jurisdiction including but not limited to either of the following:
 - Whether the jurisdiction hosts a solid waste facility or any regional diversion facility.
 - The effects of self-hauled waste and construction and demolition waste.
- The extent to which the jurisdiction previously relied on biomass diversion credit and the extent to which it may be impacted by the lack of the credit.
- Information regarding the programs the jurisdiction is undertaking to address specific disposal challenges and why it is not feasible to implement programs to respond to other factors that affect the amount of waste that is disposed.
- Is the actual per capita disposal rate reflective of actual programmatic performance?

Not Meeting Diversion Requirements

- If the total annual per capita disposal rate is greater than the jurisdiction's 50% equivalent per capita disposal target, how much greater is it?
- Is the increase in per capita disposal rate the result of the jurisdiction's disposal increasing faster than the jurisdiction's growth?
- Is the actual per capita disposal rate reflective of actual programmatic performance?
- Has the jurisdiction provided relevant and substantive documentation indicating that the factors used in calculating its annual per capita disposal rate may have resulted in rate 50% equivalent per capita disposal target that is inaccurate and may require correction?

ENFORCEMENT

The preceding sections entitled "SRRE Implementation" and "HHWE Implementation" outline the criteria Board staff recommends using to determine level of implementation. The following section outlines the enforcement processes recommended to be used by CalRecycle.

Steps Toward Compliance

CalRecycle's Jurisdiction Review process will be used to assess the level of implementation of jurisdictions' SRREs and HHWEs. For example, for the 1999/2000 Biennial Review, staff

evaluated the program implementation and diversion rate information in jurisdictions' 1999 and 2000 Annual Reports to determine their progress in implementing diversion programs selected in their SRREs (and HHWEs) and in meeting the 50 percent diversion requirement in 2000. Staff then presented the results of that review and their recommendations to the Board at a regularly scheduled meeting. To the extent possible, this hearing will be held in the local or regional agency's jurisdiction (PRC Section 41825).

If CalRecycle finds, after the public hearing, that a jurisdiction has failed to adequately implement its SRRE and/or HHWE and fits into Scenarios II or III, CalRecycle may issue an Order of Compliance, including a compliance schedule (PRC Section 41825). CalRecycle will follow the procedures for issuing compliance orders adopted at the January 23-24, 2001, Board meeting. Jurisdictions determined to be in Scenario IV will be issued an Order of Compliance, including a compliance schedule. The compliance order will identify the programs of the SRRE and/or HHWE that are not being implemented or attained by the jurisdiction, or identify areas of the SRRE and/or HHWE that require revision. Staff recommends that CalRecycle set a specific schedule for the jurisdiction to act on these findings, to be determined on a case-by-case basis. CalRecycle will follow the requirements of PRC Section 41825 regarding issuing a jurisdiction a compliance order for failure to adequately implement its SRRE and/or HHWE.

If a jurisdiction fails to meet the requirements of its compliance order and CalRecycle is determining whether or not to impose a fine, or determining the amount of a fine, including cases where a jurisdiction failed to meet the diversion requirements due to the inability to count the excluded wastes (agricultural waste, inert solids, scrap metals and white goods), CalRecycle will follow the requirements of PRC Section 41850(b). That Section states that in determining the amount of any penalties imposed, including penalties imposed due to the exclusion of solid waste pursuant to PRC Section 41781.2 which results in a reduction in the quantity of solid waste diverted by a city or county, CalRecycle shall consider only those relevant circumstances which have prevented a city or county or regional agency from meeting the diversion requirements. PRC Section 41850 provides a non-exclusive list of potential circumstances CalRecycle shall consider before assessing a fine, as noted in the "Statutory Relief Considerations" section below.

Statutory Relief Considerations

The preceding criteria will be used to recommend to CalRecycle whether a jurisdiction has implemented its SRRE and HHWE. Administrative civil penalties of up to \$10,000 per day per SRRE and HHWE may be levied on jurisdictions failing to implement these elements; however, statute allows CalRecycle to consider the following circumstances when determining the amount of the civil penalty.

- Disasters or acts of nature, such as the Northridge, Ferndale, and Loma Prieta earthquakes, the Oakland Hills and Malibu fires, or the mudslides that are common to California, which result in short-term increases in the amount of wastes sent to landfills and short or long-term re-direction of city and county personnel who must respond to the health and safety issues resulting from the acts of nature.

- Budgetary conditions within a jurisdiction that could not be remedied by the imposition or adjustment of solid waste fees. Examples include high unemployment, a limited tax base, or existing solid waste contracts that cannot be altered.
- Work stoppages that directly prevent a jurisdiction from implementing its source reduction and recycling element. This may include unanticipated industry closures, closure of privately-owned composting or materials recovery facilities, strikes by city or county labor unions, or work stoppages in private industries that provide support and/or materials to a jurisdiction through a public-private partnership.
- The extent to which a jurisdiction has implemented additional source reduction, recycling, and composting activities to comply with the diversion requirements. This would include the implementation of programs not initially selected in the SRRE, but chosen to make up for an unanticipated diversion shortfall in a selected program or to adjust to meet changes in the composition of the jurisdiction's waste stream.
- The extent to which a jurisdiction is meeting the diversion requirements.
- The extent to which a jurisdiction has made good faith efforts to implement its SRRE or HHWE. "Good faith effort" is shown when a city, county, or regional agency has made all reasonable and feasible efforts to implement those programs or activities identified in its SRRE or HHWE, or alternative programs or activities that achieve the same or similar results. A jurisdiction will be required to demonstrate to CalRecycle its good faith efforts. CalRecycle will determine the adequacy of the effort, as described by the city, county or regional agency.

Compliance Order and Schedule

Jurisdictions that are issued Compliance Orders by CalRecycle will work with staff to develop compliance schedules for implementing the Order. CalRecycle staff will monitor the progress of the jurisdiction throughout the compliance period. In determining the appropriate compliance schedule, staff recommends CalRecycle consider the following:

- a) Existing budgetary and/or personnel constraints or other compelling issues within the jurisdiction (for example, time required to solicit proposals, conduct bid processes, establish pilot programs, generate funding);
- b) Alternative programs the jurisdiction may undertake to meet the diversion requirements and/or SRRE implementation requirements;
- c) Local regulatory or zoning conditions that would prohibit or postpone compliance; and
- d) Impacts of the compliance schedule to public health and the environment.

Staff recommends CalRecycle include specific requirements in the compliance schedule to ensure compliance is attained, including, but not limited to, the following:

- a) A date by which the jurisdiction will achieve compliance with the requirements set forth by CalRecycle; and
- b) A specific monitoring schedule for CalRecycle to assess progress toward compliance.

Time frames for monitoring a jurisdiction's performance may include periodic (e.g., quarterly) progress reports of the jurisdiction's efforts to attain compliance.

Penalty Structure

CalRecycle may impose fines only after a jurisdiction fails to adhere to the Compliance Order and schedule requirements. Fines would be levied according to the cause of failure to adequately implement a SRRE and/or HHWE, as listed below. Staff will recommend to CalRecycle an appropriate level of penalty, based on an analysis of the above-mentioned criteria.

1. "Serious" failure includes jurisdictions that fail to implement their SRRE or HHWE without reason or justification. The fine recommended for this type of violation would be no less than \$5,000 and up to the maximum \$10,000 per day.
2. "Moderate" failure includes jurisdictions that fail to implement their SRRE or HHWE due to mitigating circumstances that have no bearing on natural disasters, budgetary constraints and work stoppages. Mitigating circumstances would be determined on a case-by-case basis by CalRecycle. The fine recommended for this type of violation would be \$1,000 to \$5,000 per day.
3. "Minor" failure includes jurisdictions that have implemented some or all programs, but have failed to meet the diversion requirements to some extent. Fines will be based on information provided by jurisdictions as outlined in the above criteria for implementation, and on statutory relief considerations. Fines, if determined to be appropriate, will be decided by CalRecycle on a case-by-case basis, and would range from \$1 to up to \$1,000 per day.

Notwithstanding the above penalty structure, if a jurisdiction demonstrates that it has made a good faith effort to implement its SRRE, including achieving the diversion requirements, CalRecycle, on a case-by-case basis, shall not impose any penalties.

REMOVAL OF PENALTIES

Jurisdictions may only be fined after failing to adhere to the compliance order and schedule. Fines will continue until a jurisdiction has implemented the programs as outlined in the compliance order.

CONCLUSION

CalRecycle staff has prepared this report that explains the method and criteria staff recommends using to determine whether local jurisdiction SRREs and HHWEs have been adequately implemented. It also proposes a process that CalRecycle and local jurisdictions would use to achieve compliance with implementation requirements, and the structure of penalties that may be imposed on jurisdictions that fail to adequately implement their SRREs and HHWEs.

APPENDIX A

DEFINITIONS

"Disasters/Acts of Nature" includes the proclamation by the Governor or a local governing body of the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state or local area caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake or other conditions which, by reason of their magnitude, are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city.

"Disposal" means all waste created by all sources within each jurisdiction (including businesses, government agencies and residents) which is disposed at CalRecycle-permitted landfills or CalRecycle-permitted transformation facilities, or is exported from the state. CalRecycle tracks tons of waste disposed by each jurisdiction using its Disposal Reporting System. Also, see Public Resources Code Section 41821.5.

"Diversion program" means a program in the source reduction and recycling element of a jurisdiction's integrated waste management plan, specified in Chapter 2 (Commencing with Section 41000) of, or Chapter 3 (commencing with Section 41300) of, Part 2 and that has the purpose of diverting solid waste from landfill disposal or transformation through source reduction, recycling, and composting activities. "Diversion program additionally includes any amendments, revisions, or updates to the element, and any programs set forth in a time extension, alternative requirement, or compliance order approved by CalRecycle pursuant to Part 2 (commencing with Section 40900).

"Employment" means the estimate of the annual average number of employees by jurisdiction as prepared by the California Employment Development Department (EDD). It is the number of people aged 16 years or older employed at places within each jurisdiction's boundaries (industry employment)--not the number of jurisdiction residents with jobs (labor force employment). Employment includes full-time and part-time employees even if the employee is on paid vacation or paid sick leave, but not if the employee is involved in a labor-management dispute. Self-employed, unpaid family workers, and private household employees are not included. It is a benchmark estimate to compare year-to-year employment change.

"Estimated generation amounts" The estimated reporting year generation amount is calculated by adjusting the base-year generation for changes in population and economics. The uniform method for adjusting waste disposal to account for changes in population and economics adjusts the maximum allowable reporting year disposal amount using a combination of the ratios of base-year to report-year population, employment, taxable retail sales and Consumer Price Index factors. Waste tonnage from the residential sector are calculated separately from waste from the non-residential sector (i.e., commercial/industrial wastes); then the waste tonnage from both sectors are added together, as the adjustment factors influence residential and non-residential wastes in a slightly different way. Pursuant to SB 1016 (Wiggins, 2008) as of January 1, 2009,

measurement of the PRC Section 41780 diversion requirement has changed to a disposal based measurement system. Accordingly jurisdictions are no longer required to calculate their estimated generation amount for each reporting year.

"Excluded waste types" PRC Section 41781.2 specifies that agricultural wastes, inert solids, scrap metals, and white goods that were diverted in the base year as a result of diversion programs that began prior to January 1, 1990, are not allowed to count toward base-year diversion claims unless CalRecycle receives documentation showing that three specific criteria are met. These waste types are referred to by CalRecycle as "restricted wastes."

"Full implementation" means the accomplishment of the program tasks, including the achievement of waste diversion requirements, as identified in each component of the Source Reduction and Recycling Element or Household Hazardous Waste Element.

"Good Faith Effort" means all reasonable and feasible efforts by a city, county, or regional agency to implement those programs or activities identified in its Source Reduction and Recycling Element and Household Hazardous Waste Element, or alternative programs or activities that achieve the same or similar results [PRC Section 41850 (d) (1)]. Good faith effort is further defined in PRC Section 41850(d) (2) and (3). Subsection (3) refers to the criteria in this policy document.

"Jurisdiction" means the city, county, or regional agency that is approved by CalRecycle pursuant to Section 40975.

"Multicounty regional agency" means a regional agency, as defined in PRC Section 40181, that includes all of the jurisdictions that are located in at least two or more rural counties.

"Per capita disposal" is a numeric indicator of reported disposal divided by jurisdiction population (residents) or in some cases jurisdiction industry employment (employees) to obtain disposal by individual.

"50 percent per capita disposal target" is the amount of disposal that is approximately equivalent to the current 50 percent diversion requirement. To meet the 50 percent goal, jurisdictions must dispose of not more than their 50 percent per capita disposal target. For most jurisdictions, the 50 percent per capita disposal target will be based on the average of 50 percent of generation in 2003 through 2006 expressed in terms of per capita disposal.

"Population" means the January 1 estimate of the number of inhabitants occupying a jurisdiction as prepared by the California Department of Finance (DOF) for each non-Census year (calendar year ending with a digit other than zero). "Population" also means the April 1 U.S. Census count for each Census year (calendar year ending with the digit zero). Population includes each person at the place where the person lives and sleeps most of the time. This place is not necessarily the same as the person's voting residence or legal residence. Noncitizens who are living in the United States are included, regardless of their immigration status. Persons are included regardless of characteristics such as: college student, commuter worker, domestic worker or live-in nanny, foreign national, homeless, hospital or nursing home patient, prisoner, intermittent

resident or "snow-bird," military member, tourist or undocumented worker. The fundamental goal is to count each person once, only once, and in the correct "usual residence" location according to U.S. Census residence rules.

"Rural city" or "rural regional agency" means a city or regional agency that is located within a rural county as defined in PRC Section 40183(a).

"Rural county" means a county or multicounty regional agency that annually disposes of no more than 200,000 tons of solid waste as defined in PRC Section 40184(a).

APPENDIX B

RELEVANT WASTE REDUCTION STATUTES

- PRC Section 40973 states that the regional agency, and not the cities or counties which are member agencies of the regional agency, may be responsible for compliance with Section 41780 if specified in the agreement pursuant to which the regional agency is formed. PRC Section 40973(c) states that if all member jurisdictions of a regional agency are rural cities or rural counties, as defined in PRC Sections 40183-40184, respectively, the regional agency may be eligible for a reduction of the diversion requirements of PRC Section 41780.
- PRC Section 40974 states that notwithstanding PRC Section 40972, each city or county which is a member agency of a regional agency is liable for any civil penalties which may be imposed by CalRecycle pursuant to PRC Sections 41813 or 41850. However, an agreement which establishes a regional agency may apportion any civil penalties between or among the cities or counties which are member agencies of the regional agency if the total amount of civil penalties which may be imposed against the regional agency is equivalent to that amount which is the sum of the penalties which may be imposed against each city or county which is a member agency of the regional agency.
- PRC Section 41780 requires jurisdictions to reduce the amount of waste sent to landfills by 25 percent by 1995 and 50 percent by the year 2000.
- PRC Section 41782 allows CalRecycle to make adjustments to the amounts reported pursuant to subdivisions (a) and (c) of PRC Section 41821.5, if the city, county, or regional agency demonstrates, and CalRecycle concurs, based on substantial evidence in the record, that achievement of the diversion requirements of PRC Section 41780 is not feasible due to the fact that a medical waste treatment facility, as defined in Health and Safety Code Section 25025(a), accepts untreated medical waste, which was generated outside of the jurisdiction, for purposes of treatment, and the medical waste, when treated, becomes solid waste.
- PRC Section 41783 allows a jurisdiction submitting a SRRE after January 1, 1995, and on or before January 1, 2009, to include diversion of not more than 10 of the 50 percent diversion requirement through transformation if statutory requirements are met and allows for SRREs submitted thereafter to reduce the per capita disposal rate by an amount to achieve the same effect (up to 10 of the 50% diversion rate equivalent).
- PRC Section 41820.5 allows CalRecycle to grant a time extension from the diversion requirement of Section 41780 to a city if it incorporated after January 1, 1990 and if the county within which the city is located did not include provisions in its franchises which ensured that the now incorporated area would comply with the diversion requirements of Section 41780.

- PRC Section 41825 states that according to either a two or a four year schedule based upon whether the jurisdiction was in compliance with PRC Section 41780 for the calendar year 2006, CalRecycle shall review each city, county, or regional agency SRRE and HHWE. If, after a public hearing, which, to the extent possible, is held in the local or regional agency's jurisdiction, CalRecycle finds that the city, county, or regional agency has failed to implement its SRRE or its HHWE, CalRecycle shall issue an order of compliance with a specific schedule for achieving compliance. The compliance order shall include those conditions which CalRecycle determines to be necessary for the local agency or regional agency to complete in order to implement its SRRE or HHWE
- PRC Section 41850 allows CalRecycle, after holding a public hearing and issuing an order of compliance pursuant to Section 41825, to impose administrative civil penalties of up to ten thousand dollars per day (until the jurisdiction implements the element) on jurisdictions that have failed to make a good faith effort to implement their SRRE or HHWE. This section directs CalRecycle to consider only those relevant circumstances that have prevented a jurisdiction from meeting the diversion requirements, and provides examples of legitimate relevant circumstances. This section also describes what is meant by "good faith effort".
- PRC Section 41850.5 states that any administrative civil penalty imposed by CalRecycle pursuant to Sections 41813 or 41850 shall be deposited in the Local Government Assistance Account. Funds deposited in that account shall be used solely for the purposes of assisting local governments in complying with the diversion requirements.